



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

Mr. Vic McWherter
Staff Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-308

Dear Mr. McWherter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 24728.

Texas Natural Resource Conservation Commission (the "commission") has received a request for information submitted by certain companies in response to a commission inquiry. You have submitted information that the commission received from two companies. You assert that this information is excepted from required public disclosure under section 552.110 of the act.

Section 552.110 excepts from required public disclosure "[a] trade secret or commercial or financial information . . . [that is] privileged or confidential by statute or judicial decision." Section 552.110 protects trade secrets as defined by the six criteria set forth in the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). This office will accept a trade secret claim when a prima facie case is made that the information in question constitutes a trade secret and no argument is made that rebuts that assertion as a matter of law. Open Records Decision No. 552 (1990). Section 552.110 also protects "commercial or financial information" but only if it is confidential under some other source of law such as a statute or judicial decision. Open Records Decision No. 592 (1991).

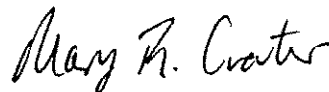
We have reviewed the information submitted to this office by the commission. The first document is a September 7, 1993 letter to the commission from Schenectady International. In an April 29, 1994 letter to the commission, a representative of Schenectady International stated that the September 7, 1993 letter does not contain confidential information and may be released. Therefore, we conclude that that information is not confidential under section 552.110 and must be released.

The remaining information submitted by the commission consists of a September 17, 1993 letter to the commission from the Great Lakes Chemical Corporation with attachments. The letter states, "Please notice that certain pages of our submission are marked as containing confidential business information. Great Lakes Chemical Corporation has marked these documents confidential and must insist that this information not be shared with the public or anyone within the agency who is not directly involved with this case." We note that the fact that a person submitting information to a governmental body expects it to be kept confidential does not make it confidential under section 552.110. Open Records Decision No. 203 (1978). Neither the commission nor Great Lakes Chemical Corporation has identified any statute or judicial decision that would make this information confidential, nor are we aware of any.

Furthermore, neither the commission nor Great Lakes Chemical Corporation has made a prima facie case that the information constitutes a trade secret, nor is this apparent from the documents on their face. Moreover, this office wrote to Great Lakes Chemical Corporation on April 12, 1994, stating that if the company wished to claim that the information is excepted from required public disclosure it had to inform us of its reasons in writing. The letter also stated that if this office did not receive a response within 14 days, "we will assume that you have no privacy or property interest in the document(s)." The Great Lakes Chemical Corporation did not respond. Therefore, we have no basis for concluding that this information is confidential under section 552.110.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/KKO/rho

Ref.: ID# 24728

Enclosures: Submitted documents

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